

Stephen G. Wilcox
State Bar Number 21454300
WILCOX LAW, PLLC
P.O. Box 201849
Arlington, TX 76006
(817) 870-1694 Telephone
swilcox@wilcoxlaw.net
ATTORNEY FOR DAIMLER TRUST

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:

RED RIVER WASTE SOLUTIONS, LP

Debtor

§
§
§
§
§
§
§
§
§
§

CHAPTER 11

CASE NO. 21-42423

**PRE-PETITION LESSOR DAIMLER TRUST'S LIMITED OPPOSITION TO
DEBTOR'S EXPEDITED MOTION FOR ENTRY OF AN ORDER (I) APPROVING
BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTOR'S ASSETS; (II) APPROVING PROCEDURES FOR THE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF AND
RESERVATION OF RIGHTS**

TO THE UNITED STATES BANKRUPTCY COURT:

COMES NOW, Pre-petition Lessor DAIMLER TRUST ("DAIMLER") and submits this Limited Opposition to Debtor's Expedited Motion for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtor's Assets; (II) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (the "Sale Procedures Motion").

I.

BACKGROUND FACTS

1. Pre-petition, DAIMLER and Debtor Red RIVER WASTE SOLUTIONS, LP ("Debtor") entered into a Master Lease Agreement dated February 23, 2018 (the "Lease") for the Lease of two Freightliner M2-106 Trucks (the "Vehicles"). On November 19, 2021, DAIMLER

filed its Motion to Compel Assumption or Rejection of Defaulted Unexpired Lease of Personal Property; for Provision of Adequate Protection and Maintenance of 11 U.S.C. §365(d)(5) Payments; and for Modification of the Automatic Stay [Docket Nos. 167 and 168] (the "Assumption Motion"). In the Assumption Motion DAIMLER sought a deadline for assumption or rejection of the Lease and an order for post-petition lease payments.

2. The Assumption Motion was resolved by way of that certain Agreed Order of Daimler Trust to Compel Assumption or Rejection of Defaulted Unexpired Lease of Personal Property which was entered on January 12, 2022 [Docket No. 278] (the "Agreed Order").

3. At page 2, paragraph 1 of the Agreed Order Debtor stipulated and agreed that DAIMLER was the Lessor of the Vehicles and that the Lease was a "true lease" as opposed to a secured purchase contract. At page 2-3, paragraph 2 of the Agreed Order, the monthly payments due DAIMLER are characterized as "Lease payments." At page 3, paragraph 5 of the Agreed Order, DAIMLER and the Debtor stipulated that Debtor would be afforded an extension of time to assume or reject the Lease.

4. On February 9, 2022, the Debtor filed its [Proposed] Chapter 11 Plan for Red River Waste Solutions, LP [Docket No. 352] (the "Plan"). At Article I, page 24, paragraphs 11 and 12 of the Plan, Debtor defines those certain "Austin Truck Secured Claims" as "[T]hose certain claims asserted by Daimler Trust arising from an alleged purchase money security interest in the Austin Truck Vehicles" and defines the "Austin Truck Vehicles" as the two above-described Freightliner trucks leased by DAIMLER. The "Austin Truck Secured Claims" are classified in the Plan as impaired Class 6 secured claims. At pages 57 through 58 of the Plan, the Debtor proposes, in a liquidation scenario, to treat DAIMLER'S Lease in the manner provided for secured claims and indicates that the Vehicles are subject to valuation under 11 U.S.C. §506. The Plan provides further that in a "Restructuring" scenario DAIMLER's Lease will be treated pursuant to a so-called "Daimler Trust Settlement" described at Article II.B. of the Plan. This "Daimler Trust Settlement" is, in essence, the terms of the Agreed Order. Thus, in its Plan the Debtor proposes to treat DAIMLER's Lease like a lease in the event it reorganizes and like a secured claim in the event it liquidates.

II.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

5. The Debtor has already conclusively stipulated and agreed that the Lease is a true lease and that DAIMLER is the lessor of the Vehicles. That stipulation and agreement has been reduced to an entered order. While the Sale Procedures Motion makes no specific reference to DAIMLER or any other creditor or lessor by name, it is reasonable to interpret the Sale Procedures Motion by reference to the assertions of and the proposed treatment of claims in the Plan as the Sale Procedures Motion states, at page 2, paragraph 1 thereof: “The [Sale Procedures] Motion and the accompanying Bidding Procedures are submitted in connection with the Debtor’s chapter 11 plan which the Debtor anticipates filing on February 9, 2022.” In a liquidation scenario, which the Sale Procedures Order contemplates, the Plan provides for a treatment of DAIMLER’s Lease wholly at odds with the Debtor’s admissions in the Agreed Order that the Lease is a “true lease.” As a true lease, the Lease must either be assumed—and perhaps assigned—or rejected; regardless of whether the Debtor elects to reorganize or liquidate.

6. To the extent the Debtor seeks the approval of sale procedures to auction DAIMLER’s leased Vehicles and to treat DAIMLER’s Lease as a secured claim, DAIMLER objects to the Sale Procedures Motion. DAIMLER does not object to that aspect of the Sale Procedures Motion seeking approval of proposed procedures relating to the assumption or rejection of DAIMLER’s Lease.

WHEREFORE, PREMISES CONSIDERED, Daimler Trust requests that the Debtor’s Expedited Motion for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets; (II) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief be denied to the extent it seeks to reclassify DAIMLER’s claims and does not specifically accept or reject DAIMLER’s Lease; and granting DAIMLER such other and further relief to which it may be otherwise entitled.

RESPECTFULLY SUBMITTED.

WILCOX LAW, PLLC

By: /s/ Stephen G. Wilcox
Stephen G. Wilcox
State Bar No. 21454300
P.O. Box 201849
Arlington, TX 76006
(817) 870-1694 Telephone
swilcox@wilcoxlaw.net
ATTORNEY FOR DAIMLER TRUST

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served by FIRST CLASS MAIL, POSTAGE PREPAID on:

Red River Wast Solutions, LP
4004 East Highway 290 West
Dripping Springs, TX 78620

and by ELECTRONIC FILING on:

Jane Gerber
McDermott Will & Emery LLP
2501 North Harwood St., Suite 1900
Dallas, TX 75201

Office of the U.S. Trustee
1100 Commerce, Room 976
Dallas, TX 75242

on February 11, 2022.

/s/ Stephen G. Wilcox
Stephen G. Wilcox